

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

W. R. GRACE & CO., *et al.*,

Debtors.

)
) Case No. 16-799 (LPS)

) Bankruptcy Case No. 01-01139 (KG)

) Appeal Case No. 16-799

) Re: Bankruptcy Court Docket No. 929564

) District Court Docket No. 4

**APPELLEES' COUNTER-STATEMENT OF ISSUES AND
COUNTER-DESIGNATION OF ITEMS TO BE
INCLUDED IN THE RECORD ON APPEAL**

Pursuant to Fed. R. Bankr. Proc. 8009(a)(3), Appellees, by and through their counsel, hereby submit the following counter-statement of issues for the appeal:

1. Whether the appeal is not as-of-right, and should be dismissed or, in the alternative, Appellant should be required to file a motion for leave to appeal in accordance with Fed. R. Bankr. Proc. 8004(a);

2. Whether the appeal meets the standards for allowing an interlocutory appeal;

3. Whether the Bankruptcy Court's August 25, 2016 Opinion correctly found that the mandatory and binding provisions of the confirmed, affirmed and consummated Plan require AMH to adjudicate its individual claim before commencing an appeal of its class claims.

4. Whether AMH's appeal of the Plan's requirement that AMH must adjudicate its individual claim before appealing its class claims improperly challenges provisions of Grace's Plan of Reorganization, which was confirmed and

affirmed in 2011, 2012 and 2013 and substantially consummated in 2014, and therefore is res judicata and must be dismissed;

5. Whether the appeal of Grace's Plan provisions is constitutionally moot.

6. Whether the Bankruptcy Court's August 25, 2016 Opinion correctly found that AMH's motion to alter or amend the denial of class certification did not offer sufficient evidence or reason to alter or amend the Bankruptcy Court's May 2008 denial of class certification.

7. Whether, even though the merits of class certification are not properly before this Court, AMH has not satisfied the requirements of Rule 23.

Appellees also hereby submit the following list of additional items to be included in the record on appeal. This list supplements the Appellant's Designation of Items to be Included in the Record on Appeal [Dkt. 4].

Additional Items to be Included in the Record on Appeal			
	Date	Bankruptcy Dkt. No.	Description
1.	1/14/1993	16422, Ex. 1*	<i>Anderson Memorial, Court of Common Pleas, County of Hampton, South Carolina, No. 92-CP-25-279, First Amended Class Action Complaint</i>
2.	4/04/1994	16422, Ex. 2	<i>Anderson Memorial, Court of Common Pleas, County of Hampton, South Carolina, No. 92-CP-25-279, Defendants' Motion to Strike Class Action Allegations As To Non-Residents Whose Causes Of Action Are Foreign To South Carolina</i>

* Documents enumerated as Bankruptcy Dkt. No. "16422, Ex. XX" are Debtors' Exhibits to the July 5, 2007 *Anderson Memorial* Class Certification Hearing held in the Bankruptcy Court, the transcript of which is Docket No. 16422.

Additional Items to be Included in the Record on Appeal			
3.	7/06/1994	16422, Ex. 4	<i>Anderson Memorial, Court of Common Pleas, County of Hampton, South Carolina, No. 92-CP-25-279, Transcript of Hearing Before Honorable William L. Howard; July 6, 1994; pgs. 69-72</i>
4.	8/12/1994	16422, Ex. 5	<i>Anderson Memorial, Court of Common Pleas, County of Hampton, South Carolina, No. 92-CP-25-279, Memorandum Order granting Certain Defendants' Motion to Strike Class Allegations as to Non-Residents Whose Causes of Actions are Foreign to South Carolina</i>
5.	5/31/1996	16422, Ex. 9	<i>Anderson Memorial, Court of Common Pleas, County of Hampton, South Carolina, No. 92-CP-25-279, Order Denying Anderson Memorial's Motion to Reconsider</i>
6.	9/05/1996	16422, Ex. 10	<i>Anderson Memorial, Court of Common Pleas, County of Hampton, South Carolina, No. 92-CP-25-279, Anderson Memorial's Second Amended Class Action Complaint</i>
7.	3/05/1998	16422, Ex. 13	<i>Anderson Memorial, Court of Common Pleas, County of Hampton, South Carolina, No. 92-CP-25-279, Affidavit of Robert Beber in Support of Defendants' Opposition to Anderson Memorial's Motion to Certify a Class, with Exhibits</i>
8.	3/05/1998	16422, Ex. 14	<i>Anderson Memorial, Court of Common Pleas, County of Hampton, South Carolina, No. 92-CP-25-279, Defendants' Memorandum in Opposition to Class Certification</i>
9.	5/26/1998	16422, Ex. 16	<i>Anderson Memorial, Court of Common Pleas, County of Hampton, South Carolina, No. 92-CP-25-279, Defendant's Response to Plaintiff's Reply Brief, with Exhibits</i>
10.	10/19/2000	16422, Ex. 17	<i>Anderson Memorial, Court of Common Pleas, County of Hampton, South Carolina, No. 92-CP-25-279, Affidavit of Richard Finke, with Exhibit</i>
11.	10/23/2000	16422, Ex. 18	<i>Anderson Memorial, Court of Common Pleas, County of Hampton, South Carolina, No. 92-CP-25-279, Certain Defendants' Post-Hearing Brief in Opposition to Class Certification, Anderson Memorial, with Exhibits</i>
12.	2/09/2001	16422, Ex. 20	<i>Anderson Memorial, Court of Common Pleas, County of Hampton, South Carolina, No. 92-CP-25-279, Conditional Order Certifying a Statewide Class</i>

Additional Items to be Included in the Record on Appeal			
13.	2/14/2001	16422, Ex. 21	<i>Anderson Memorial, Court of Common Pleas, County of Hampton, South Carolina, No. 92-CP-25-279, Memorandum of Defendant W. R. Grace in Response to February 9 Show Cause Order of this Court, Anderson Memorial</i>
14.	3/9/2001	Attached hereto as Exhibit A	<i>Anderson Memorial, Court of Common Pleas, County of Hampton, South Carolina, No. 92-CP-25-279, March 9, 2001 hearing transcript</i>
15.	4/02/2001	1	Voluntary Petition Under Chapter 11
16.	5/07/2001	16422, Ex. 25	<i>Anderson Memorial, Court of Common Pleas, County of Hampton, South Carolina, No. 92-CP-25-279, Letter from Judge Hayes to Dan Speights</i>
17.	6/27/2001	595	Exhibits to (1) Debtors' Motion for Entry of Case Management Order, Establishment of Bar Date, Approval of the Proof of Claim Forms and Approval of Notice Program, and (2) Memorandum in Support Thereof
18.	7/05/2001	16422, Ex. 26	<i>Anderson Memorial, Court of Common Pleas, County of Hampton, South Carolina, No. 92-CP-25-279, Final Certification Order</i>
19.	6/21/2002	2269	Motion of the Official Committee of Asbestos Property Damage Claimants (A) For Modification of the Court's Order Establishing Case Management Procedures and Hearing Schedule (B) Clarification of Order as to All Non-Asbestos Claims, Asbestos Property Damage Claims, and Medical Monitoring Claims: (I) Establishing Bar Date, (II) Approving Proof of Claim Forms and (III) Approving Notice Program and, (C) To Extend or Abate Deadlines for Submission of Information or Certification by "Counsel of Record" Until Clarification Thereof
20.	7/17/2002	2394	Amended Notice of Agenda of Matters Scheduled for Hearing on July 22, 2002
21.	7/22/2002	2469	Sign-In Sheet for Hearing Held on July 22, 2002
22.	1/06/2005	7462	Transcript of Hearing Before Honorable Judith K. Fitzgerald, September 27, 2004
23.	6/17/2005	8640	Debtors' Twelfth Omnibus Objection to Certain Claims Filed by the Law Firm of Speights & Runyan (Non-Substantive)

Additional Items to be Included in the Record on Appeal			
24.	6/29/2005 - 9/26/2005	8710-8715, 8717-8727, 8729-8732, 8734, 8736, 8748-8767, 8769-8779, 8784-8785, 8787-8814, 8819-8826, 8828, 8830- 8843, 8849- 8871, 8873- 8895, 8911- 8936, 8943, 8991, 9517	Notices of Withdrawal of Various Proofs of Claims Filed by Speights & Runyan and Orders Approving same
25.	9/30/2005	9546	Debtors' Brief in Support of the Disallowance and Expungement of 1,900 Improper Claims Filed by the Law Firm of Speights & Runyan
26.	11/01/2005	10961	Order for the Withdrawal and Expungement of 1495 Asbestos PD Claims
27.	12/13/2005	11333	AMH Notice of Rule 30(b)(6) Deposition of W. R. Grace
28.	12/13/2005	11334	AMH Notice of Rule 30(b)(6) Deposition of W. R. Grace
29.	12/19/2005	11365	Debtors' Motion for a Protective Order Against Anderson Memorial's Requests for 30(b)(6) Depositions and Documents
30.	1/03/2006	11473	Transcript of Hearing Before Honorable Judith K. Fitzgerald, December 19, 2005
31.	1/10/2006	11520	Debtors' Objection to Anderson Memorial Hospital's Motion for Limited Relief From Automatic Stay
32.	1/13/2006	11547	Debtors' Brief Describing the Purpose that Publication Notice Served in the Debtors' Bar Date Note Program
33.	2/03/2006	11712	Debtors' Brief in Support of the Disallowance of 71 Claims
34.	08/03/2006	12919	Transcript of Omnibus Hearing Before Honorable Judith K. Fitzgerald, July 24, 2006
35.	8/31/2006	13120	Order Setting Various Deadlines Regarding Objections to Asbestos Property Damage Claim, with Exhibits

Additional Items to be Included in the Record on Appeal			
36.	9/15/2006	13236	Debtors' Supplement to Objection to Anderson Memorial's Motion for Limited Relief from Automatic Stay
37.	10/13/2006	13406	Order [Amended] Setting Various Deadlines Regarding Objections to Asbestos Property Damage Claims, with Exhibits
38.	10/13/2006	13412	Debtors' Motion for Leave to File a Reply in support of its Motion for Protective Order Against Anderson Memorial's Request for 30(B)(6) Depositions and Documents
39.	11/06/2006	13588	Debtors' Motion for Protective Order Against Anderson Memorial's October 30, 2006 Requests for 30(b)(6) Depositions and Documents
40.	11/10/2006	13630	Debtor's Supplemental Brief re Federal Rule of Evidence 408 in Support of their Motion for Protective Order Against Anderson Memorial's Requests for 30(b)(6) Depositions and Documents, with Exhibits
41.	12/13/2006	Attached hereto as Exhibit B	W. R. Grace & Co.'s Responses and Objections to Anderson Memorial Hospital's October 30, 2006 Amended Requests for Production
42.	12/14/2006	14014	Memorandum Opinion on Motions for Summary Judgment by Debtors and ZAI Claimants' Motion for Partial Summary Judgment (also cited as <i>In re W. R. Grace & Co.</i> , 355 B.R. 462 (Bankr. D. Del. 2006))
43.	1/03/2007	14205	Transcript of Hearing Before Honorable Judith K. Fitzgerald, December 18, 2006
44.	1/05/2007	14236	Debtors' Response to Anderson Memorial Hospital's Motion to Compel Deposition of Debtors' Records Custodian
45.	1/17/2007	Attached hereto as Exhibit C	Grace's Response to Anderson Memorial Hospital's October 30, 2006 Amended Requests for Production, with Enclosures
46.	03/30/2007	15053	Notice of Deposition of Frank J. Perch, III
47.	04/02/2007	15062	Anderson Memorial Hospital's Amended Motion to Compel
48.	04/17/2007	15209	Memorandum Opinion Disallowing and Expunging 71 Claims filed by Speights & Runyan (also cited as <i>In re W. R. Grace & Co.</i> , 366 B.R. 302 (Bankr. D. Del. 2007))

Additional Items to be Included in the Record on Appeal			
49.	05/04/2007	15518	Debtors' Response to Anderson Memorial Hospital's Motion to Compel Privilege Log
50.	5/28/2007	15826	W. R. Grace's Response to Anderson Memorial Hospital's Motion to Strike the Debtors' December 13, 2006 Responses and Objections to AMH's Motion to Compel the Debtors to Provide Full and Complete Responses to AMH's October 30, 2006 Amended Requests for Production
51.	6/15/2007	Attached hereto as Exhibit D	W. R. Grace's Supplemental Response to AMH's October 30, 2006 Amended Requests for Production
52.	6/20/2007 - 4/27/2010	16103-16104, 16369, 16689, 17184-17186, 17193-17211, 17433-17440, 17642, 19754- 19755, 19672, 19752, 20080, 22240, 23561, 23582-23591, 23597, 24017, 24577-24578, 24580-24582, 24670-24675	Orders Authorizing Settlements of Asbestos Property Damage Claims
53.	7/13/2007	16273	Transcript of Hearing Before Honorable Judith K. Fitzgerald United States Bankruptcy Court Judge, June 29, 2007
54.	5/29/2008	18821	Memorandum Opinion on Anderson Memorial Hospital's Motion for Class Certification (also cited as <i>In re W. R. Grace & Co.</i> , 389 B.R. 373 (Bankr. D. Del. 2008))
55.	10/01/2008 - 4/27/2010	19672, 19752, 19754-19755, 20080-20081, 23561, 23582- 23591, 23593, 23595, 23597, 24577-24578, 24580-24582, 24670-24675	Orders Authorizing the Settlement of Asbestos Property Damage Claims

Additional Items to be Included in the Record on Appeal			
56.	10/10/2008	19727	Memorandum Opinion Granting Debtors' Motion for Summary Judgment (also cited as <i>In re W. R. Grace & Co.</i> , 397 B.R. 701 (Bankr. D. Del. 2008))
57.	10/20/2008	19818	Order Granting Debtors' Application, Pursuant to 11 U.S.C. §§ 105, 524(g)(4)(B)(i) and 1109, for Entry of an Order Appointing Alexander M. Sanders, Jr. as Legal Representative for Future Asbestos-Related Property Damage Claimants
58.	4/02/2009	21174	Order Approving the Motion of ZAI Class for Final Approval of a Class Settlement
59.	9/14/2009	23236	Proffer of Testimony from the Honorable Alexander M. Sanders, Jr., Asbestos PD Future Claimants' Representative, in Support of Confirmation of First Amended Joint Plan of Reorganization
60.	11/01/2009	23634	Post-Trial Brief of the Property Damage Future Claimants' Representative
61.	12/08/2009	23972	Anderson Memorial Hospital's Post-Trial Brief on its Objections to Confirmation of Debtors' First Amended Joint Plan
62.	1/31/2011	26154	Memorandum Opinion Regarding Objections to Confirmation of First Amended Joint Plan of Reorganization (also cited as <i>In re W. R. Grace & Co.</i> , 446 B.R. 96 (Bankr. D. Del. 2011))
63.	2/21/2011	26368	Notice of Submission of Conformed Joint Plan of Reorganization as of December 23, 2010 and all attachments (26368-1 - 26368-37)
64.	2/03/2014	31700	Notice of Satisfaction or Waiver of Conditions to Occurrence of Effective Date of Plan
65.	4/30/2014	32079	Notice of Filing of Report by WRG Asbestos PI Trust and attachments

Additional Items to be Included in the Record on Appeal			
Del. D. Ct., Case No. 07-287			
66.	12/06/2007	19	Memorandum Affirming Bankruptcy Court's Order Disallowing and Expunging Forty-Four Asbestos Property Damage Claims filed by Speights & Runyan (also cited as <i>Mission Towers v. W. R. Grace</i> , 2007 WL 4333817 (D. Del. Dec. 6, 2007))
Del. D. Ct., Case No. 08-118			
67.	9/04/2008	11	Memorandum Denying Anderson Memorial Hospital's Motion for Leave to Appeal the Bankruptcy Court's Order Denying Class Certification (also cited as <i>In re W. R. Grace & Co.</i> , 2008 WL 4234339 (D. Del. 2008))
68.	11/13/2008	15	Memorandum Denying Anderson Memorial Hospital's Motion To Reconsider Denial of Motion for Leave to Appeal the Bankruptcy Court's Order Denying Class Certification (also cited as <i>In re W. R. Grace & Co.</i> , 398 B.R. 368 (D. Del. 2008))
Del. D. Ct., Case No. 08-863			
69.	9/29/2009	30	Memorandum Reversing Bankruptcy Court's October 10, 2008 Order Affirmation of Dismissal of Sixteen Claims (also cited as <i>In re W. R. Grace & Co.</i> , 418 B.R. 511 (D. Del. 2009))
Del. D. Ct., Case No. 11-199			
70.	4/25/2011	22	Initial Appellate Brief of Anderson Memorial Hospital
71.	7/14/2011	160	Transcript of hearing on June 28, 2011 before Judge Buckwalter
72.	6/11/2012	217	Amended Memorandum Opinion Confirming the Joint Plan of Reorganization (also cited as <i>In re W. R. Grace & Co.</i> , 475 B.R. 34 (D. Del. 2012))
73.	7/23/2012	245	Memorandum Denying Anderson Memorial Hospital's Motion for Relief from Order and Memorandum Opinion Affirming Confirmation Order (also cited as <i>In re W. R. Grace & Co.</i> , 476 B.R. 114 (D. Del. 2012))
3d Circuit Court of Appeals, Case No. 08-1044			
74.	3/11/2009	0031733968 2	Opinion Affirming District Court's Decision and Bankruptcy Court's Decision Disallowing Claims as Untimely (also cited as <i>In re W. R. Grace & Co.</i> , 2009 WL 648651 (3d Cir. 2009))

3d Circuit Court of Appeals, Case No. 08-4829			
75.	12/14/2009	0031994429 3	Order Granting W. R. Grace's Motion to Dismiss AMH's Appeal of the Denial of Class Certification
3d Circuit Court of Appeals, Case No. 12-1521 and 12-2904			
76.	09/04/2013	0031113773 75	Opinion Affirming District Court's Decision Overruling the Objections of Montana and the Crown to Grace's Joint Plan of Reorganization (also cited as <i>In re W. R. Grace & Co.</i> , 729 F.3d 311 (3d Cir. 2013))
3d Circuit Court of Appeals, Case No. 12-2923 and 12-3143			
77.	12/10/2012	0031111027 80	Initial Appellate Brief of Anderson Memorial Hospital
78.	6/06/2013	0031112845 90	Amended Initial Brief of Anderson Memorial Hospital
79.	09/04/2013	0031113773 01	Opinion Affirming District Court's Confirmation of the Joint Plan of Reorganization (also cited as <i>In re W. R. Grace & Co.</i> , 729 F.3d 332 (3d Cir. 2013))

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Respectfully submitted,

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